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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,
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11 Plaintiff,
12 v.
13 DANIEL NIX,
14 Defendant.

Case No. 2:17-CR-105-RSL

ORDER DENYING
DEFENDANT'S MOTION
FOR STAY OF
SENTENCING HEARING
PENDING APPEAL

15 This matter comes before the Court on defendant Daniel Nix's "Motion for Stay of
16 Sentencing Hearing Pending Appeal." Dkt. #204. On August 10, 2018, defendant was found
17 guilty of nine counts of attempted evasion of payment of taxes, four counts of attempted evasion
18 of assessment of taxes, eleven counts of presentation of fictitious financial obligations, and one
19 count of corrupt interference with the administration of the Internal Revenue Code. Dkt. #174.
20 Sentencing was set for November 9, 2018, Dkt. #171, and then reset on September 7, 2018 for
21 December 7, 2018. Dkt. #176.

22 Defendant filed a motion for a new trial on September 12, 2018. Dkt. #179. On
23 November 8, 2018, at oral argument on that motion, the Court invited defendant to file an *ex*
24 *parte* motion for an *in camera* review of his evidence. This was filed on November 13, 2018.
25 Dkt. #195. Defendant also filed a "Motion for Enlargement of Time to File Objections to
26 Presentence Investigation Report" on the basis of the same allegedly "newly discovered
27 evidence." Dkt. #196. Defendant's evidence contained no confidential information, and he failed
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1 to show that he was entitled to a new trial. All three motions were accordingly denied. Dkt.
2 #198, #199, #200. On November 23, 2018, defendant filed a notice of appeal of the Court's
3 denial of his motion for a new trial. Dkt. #203.


4 The Court granted defendant's motion to seal the documents attached to his motion for *in*
5 *camera* review so that they could be made a part of the record for any appeal that defendant filed
6 in the future. See Dkt. #198 at 2. The Court "did not recognize[] [defendant's] right to appeal"
7 the order denying defendant's motion for a new trial, or any other order. See id.

8 The Court does not lack jurisdiction to proceed with sentencing. See 28 U.S.C. § 1291;
9 see Fed. R. Crim. P. 37. On November 28, 2018, the Ninth Circuit filed an order directing the
10 defendant to either move for voluntary dismissal of the appeal or show cause why it should not
11 be dismissed for lack of jurisdiction. It noted that "[a] review of the record suggests that this
12 court may lack jurisdiction over the appeal because the district court's November 21, 2018 order
13 denying appellant's motion for a new trial is not appealable as a final judgment or an order that
14 comes within the collateral order doctrine." See United States of America v. Daniel A. Nix, No.
15 18-30239 (9th Cir. Nov. 28, 2018) (order to show cause).

16 Defendant has been on notice of the date of this sentencing hearing for three months. See
17 Dkt. #176. In fact, on November 8, 2018, at oral argument on his motion for a new trial, the
18 Court explicitly urged defendant to focus on preparing for it. He is not entitled to more time. See
19 Dkt. #204 at 2; see also Dkt. #200. Nor will defendant's rights be prejudiced if he prosecutes his
20 appeal while in custody. See 18 U.S.C. § 3143(b).

21 For all the foregoing reasons, defendant's motion is DENIED.

22 DATED this 6th day of December, 2018.

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27 Robert S. Lasnik
28 United States District Judge